

### **DETAILED ACTION**

1. This is in response to applicant's amendment wherein claims 53-76 have been added, claims 63 and 74-76 are withdrawn, and claims 25-29, 34-40, and 48-52 have been canceled. Therefore, claims 53-62 and 64-73 are pending.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2010 has been entered.

### ***Election/Restrictions***

3. Claims 53, 55-62, 64, and 66-73 are allowable. The restriction requirement between species, as set forth in the Office action mailed on July 29, 2009, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of a generic allowable claim. Claims 63 and 74-76, directed to different species, are no longer withdrawn from consideration because the claims require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

#### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William F. Rauchholz on May 16, 2011.

The application has been amended as follows:

a. Claim 53 has been replaced with:

An article of footwear, comprising:

a sole having a toe part, a ball part extending from the toe part, and an instep-heel part extending from the ball part, wherein:

the toe part is made of a substantially inflexible material and includes a plurality of spikes extending from a bottom surface thereof,

the ball part is made of a flexible material, and

the instep-heel part is made of a substantially inflexible material, wherein the instep-heel part includes a heel portion including a first heel side support, a second heel side support, and an end heel support at a rear heel location, wherein a first opening is defined through the heel portion by the first heel side support and the end heel support and a second opening is defined through the heel portion by the second heel side support and the end heel support;

an upper located over an instep portion of the instep-heel part and engaged with the instep-heel part of the sole by an adjustable connection, wherein the upper is located such that a foot-receiving opening for the article of footwear is defined between the upper and the heel portion of the instep-heel part, and wherein the upper does not extend over the ball part, toe part, and heel part of the sole such that an entire area of a top surface of the sole forward and aft of the upper is openly exposed; and

the instep-heel part including a third opening defined through an entire thickness of the instep-heel part, wherein the third opening extends from the heel portion to the instep portion of the instep-heel part and wherein the third opening extends between the first heel side support and an upwardly extending instep medial side support of the instep-heel part located at a medial side of the article of footwear such that the first heel side support and the upwardly extending

Art Unit: 3765

instep medial side support are separated and spaced apart from each other by the third opening.

b. Claim 54 has been cancelled.

c. Claim 58 has been replaced with:

The article of footwear of claim 53, wherein the upper is engaged with the instep portion of the instep-heel part by an adjustable tie.

d. Claim 62 has been replaced with:

The article of footwear according to claim 53, wherein the instep-heel part includes an upwardly extending instep lateral side support at a lateral side of the article of footwear, and wherein the upper is engaged with the instep medial side support and the instep lateral side support.

e. Claim 63, lines 1-2, the limitation "the upper instep member" has been changed to --the upper--.

f. Claim 64 has been replaced with:

An article of footwear, consisting essentially of:

a sole having a toe part, a ball part extending from the toe part, and an instep-heel part extending from the ball part, wherein:

the sole is comprised of sections of a flexible material and a substantially inflexible material arranged in an alternating manner,

the toe part includes a plurality of spikes extending from a bottom surface thereof, and

Art Unit: 3765

the instep-heel part includes a heel portion having a first heel side support, a second heel side support, and an end heel support at a rear heel location, wherein a first opening is defined through the heel portion by the first heel side support and the end heel support and a second opening is defined through the heel portion by the second heel side support and the end heel support;

an upper located over an instep portion of the instep-heel part and engaged with the instep-heel part of the sole by an adjustable connection, wherein the upper is located such that a foot-receiving opening for the article of footwear is defined between the upper and the heel portion of the instep-heel part, and wherein the upper does not extend over the ball part, toe part, and heel part of the sole such that an entire area of a top surface of the sole forward and aft of the upper is openly exposed; and

the instep-heel part including a third opening defined through an entire thickness of the instep-heel part, wherein the third opening extends from the heel portion to the instep portion of the instep-heel part and wherein the third opening extends between the first heel side support and an upwardly extending instep medial side support of the instep-heel part located at a medial side of the article of footwear such that the first heel side support and the upwardly extending instep medial side support are separated and spaced apart from each other by the third opening.

g. Claim 65 has been cancelled.

Art Unit: 3765

h. Claim 69 has been replaced with:

The article of footwear of claim 64, wherein the upper is engaged with the instep portion of the instep-heel part by an adjustable tie.

i. Claim 73 has been replaced with:

The article of footwear according to claim 64, wherein the instep-heel part includes an upwardly extending instep lateral side support at a lateral side of the article of footwear.

j. Claim 74 has been replaced with:

The article of footwear according to claim 73, wherein a first end of the upper extends directly from the instep lateral side support and a second end of the upper engages the instep medial side support by the adjustable connection.

k. Claim 75, lines 1-2, the limitation "the upper instep member" has been changed to --the upper--.

l. Claim 76 has been replaced with:

The article of footwear according to claim 64, wherein the sole is made from plural sections of the flexible material and plural sections of the substantially inflexible material arranged in an alternating manner.

m. In the specification, page 5, lines 16-17, "The upper instep 50 is attached to the instep side supports 40 by means of ties 60" has been changed to --The upper instep 50 is attached to the instep side supports 40 by means of ties 60. The instep side supports 40 include an upwardly extending instep medial side support located at a medial side of the article of footwear and an upwardly

extending instep lateral side support at a lateral side of the article of footwear.

The upper 50 is engaged with the instep medial side support and the instep lateral side support--.

n. In the specification, page 5, lines 32-33, "The straps connecting the upper instep 50 to the instep side supports 40 are adjustable by means of the ties 60" has been changed to --The upper instep 50 is located over an instep portion of the instep-heel part 90 and is engaged with the instep-heel part of the sole 20 by an adjustable connection. The upper 50 is located such that a foot-receiving opening for the article of footwear is defined between the upper and the heel portion 30 of the instep-heel part 90. The upper does not extend over the ball part 80, toe part 70, and heel part 30 of the sole 20 such that an entire area of a top surface of the sole forward and aft of the upper 50 is openly exposed. The straps connecting the upper instep 50 to the instep side supports 40 are adjustable by means of the ties 60--.

o. In the specification, page 6, lines 6-8, "the two heel side supports 110a and 110b are connected at their common top end 130 together. A textile loop 140 is provided at the common top end" has been changed to --the two heel side supports 110a and 110b are connected at their common top end 130 together. First and second openings are defined through the heel portion by the two heel side supports respectively with the end heel support. A textile loop 140 is provided at the common top end--.

Art Unit: 3765

p. In the specification, page 6, lines 12-13, "This vacancy 95 reduces the weight of the shoe because no material is present" has been changed to --This vacancy 95 reduces the weight of the shoe because no material is present. The vacancy is considered a third opening in the sole 20 of the article of footwear. The third opening is defined through an entire thickness of the instep-heel part 90. Additionally, the third opening 95 extends from the heel portion 30 to the instep portion of the instep-heel part and between the first heel side support 110b and the upwardly extending instep medial side support 40 of the instep-heel part located at a medial side of the article of footwear such that the first heel side support and the upwardly extending instep medial side support are separated and spaced apart from each other by the third opening--.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA LALLI whose telephone number is (571)270-5056. The examiner can normally be reached on Monday-Friday 8:00 AM-5:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571) 272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3765

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner, Art Unit 3765